

**PLANNING AND ZONING COMMISSION
STAFF REPORT**

July 7, 2016



Planning Variance case no. PV16-11: Jamie Thompson & Martha MacPherson

CASE DESCRIPTION: a request for approval of a 13-foot variance to the minimum 15-foot side setback required on a patio/zero lot line residential home site, to allow the proposed construction of an in-ground swimming pool to extend within 2 feet of the northwest side property line on the subject property

LOCATION: 5006 Fairfield Court, located approximately 280 feet northwest of the intersection of Fairfield Court and Park Meadow Lane, being Lot 20 in Block 3 of the Park Meadow Subdivision

ZONING: Planned Development District - Housing (PD -H)

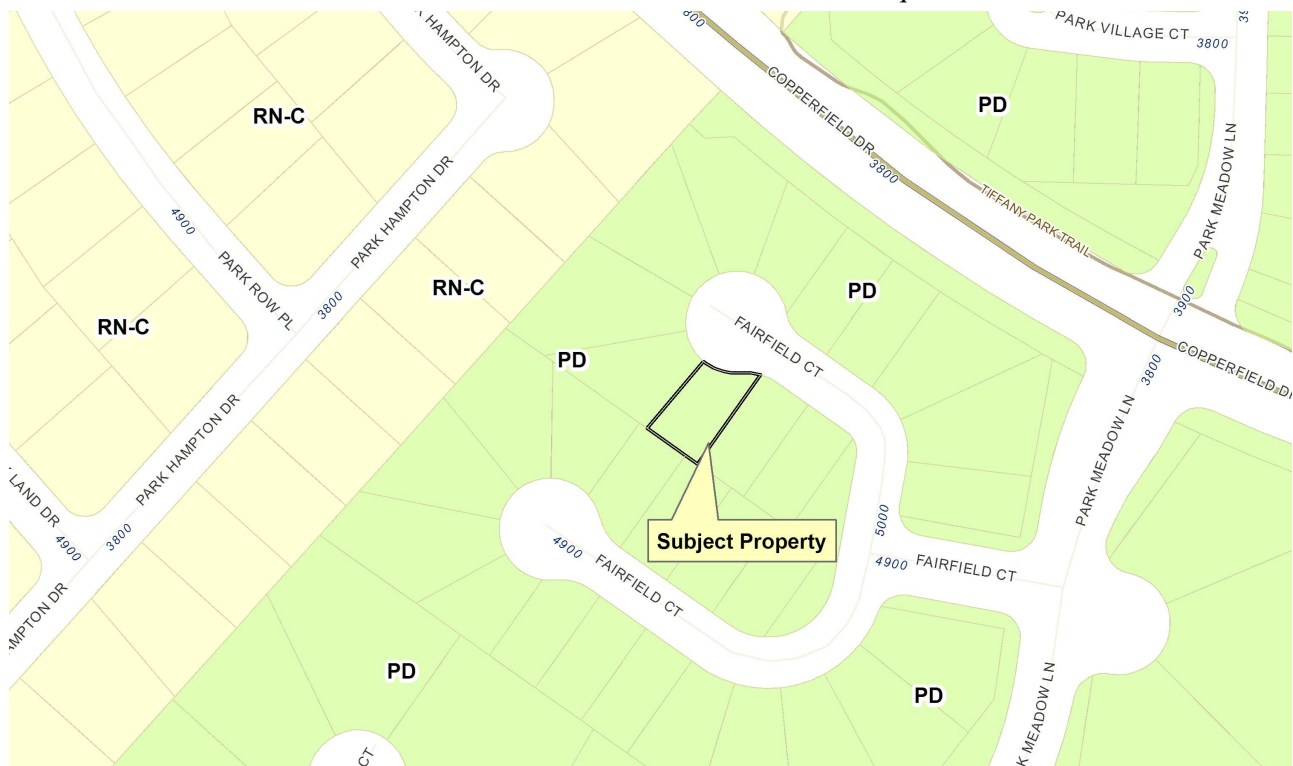
EXISTING LAND USE: single-family home (patio/zero lot line home)

PROPERTY OWNER: Jamie Thompson & Martha MacPherson

APPLICANT: Matt Ratliff, Sunshine Fun Pools

STAFF CONTACT: Randy Haynes, AICP, Senior Planner

SUMMARY RECOMMENDATION: Staff recommends **denial** of the requested variance.





BACKGROUND:

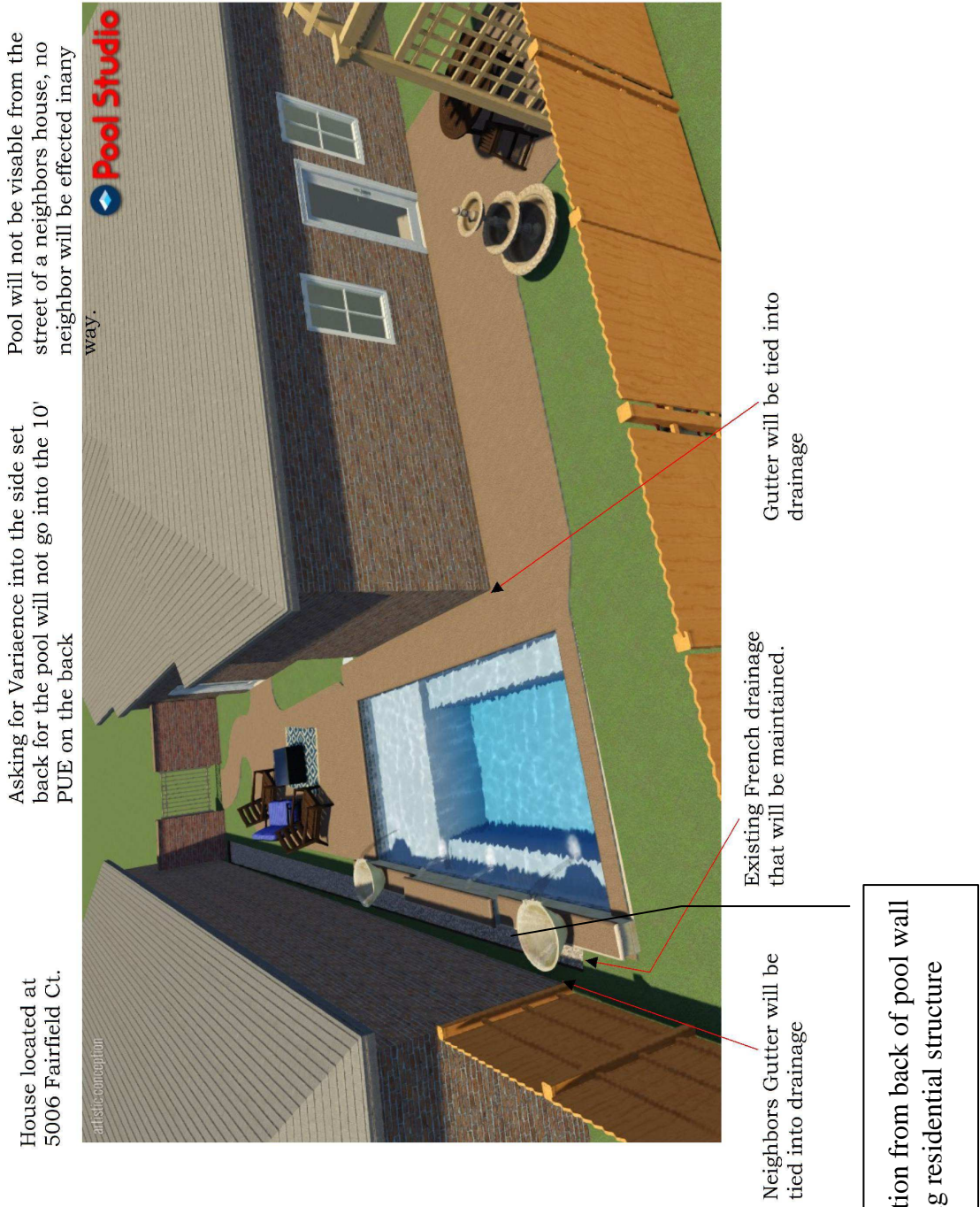
The applicant, Mr. Matt Ratliff of Sunshine Fun Pools, on behalf of the property owners Mr. Jamie Thompson and Ms. Martha MacPherson, is requesting a 13-foot variance to the 15-foot side building setback required on a patio/zero lot line residential home site, to allow the proposed construction of an in-ground swimming pool to extend within 2 feet of the northwest side property line on the subject property. The subject property is zoned Planned Development District - Housing (PD-H) and is located northwest of the intersection of Fairfield Court and Park Meadow Lane.

The 0.120 acre (5,227 square- foot) Lot is occupied by a 2,209 square foot patio home that was built in 2004. The current owners purchased the property in February 2016. The subject property is located in a portion of the subdivision subdivided for patio homes. Patio homes are built on zero lot line lots which allow for one side of the residential structure to be placed on a shared property line with a minimum 15-foot side yard established on the opposite side of the property to provide for building separation. Additionally, there is a 10-foot public utility easement that is located along the rear (southwest) property line.

The property owners desire to install a 257 square foot (12-foot, 10-inch by 21-foot, 2-inch) in-ground pool on northwest side of their property. Due to the size and configuration of the lot, the proposed pool would be located in the established 15-foot side building setback area and would be located within 2 feet of the abutting residential structure located on the adjacent lot to the northwest which is located on the shared property line.

SITE PLAN:

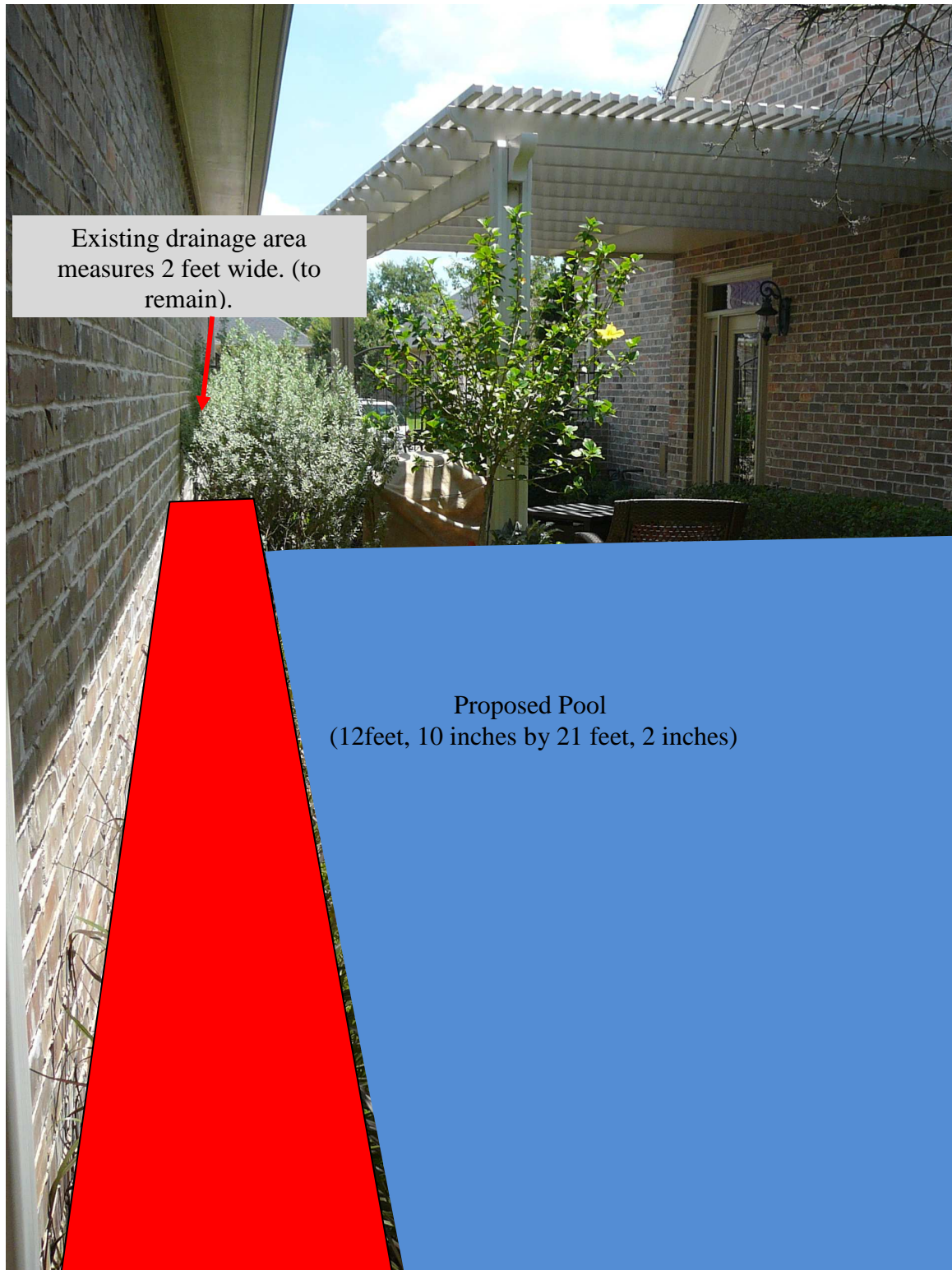
AERIAL SHOWING PROPOSED POOL AND 10-FOOT P.U.E. ALONG SOUTHWESTERN PROPERTY LINE



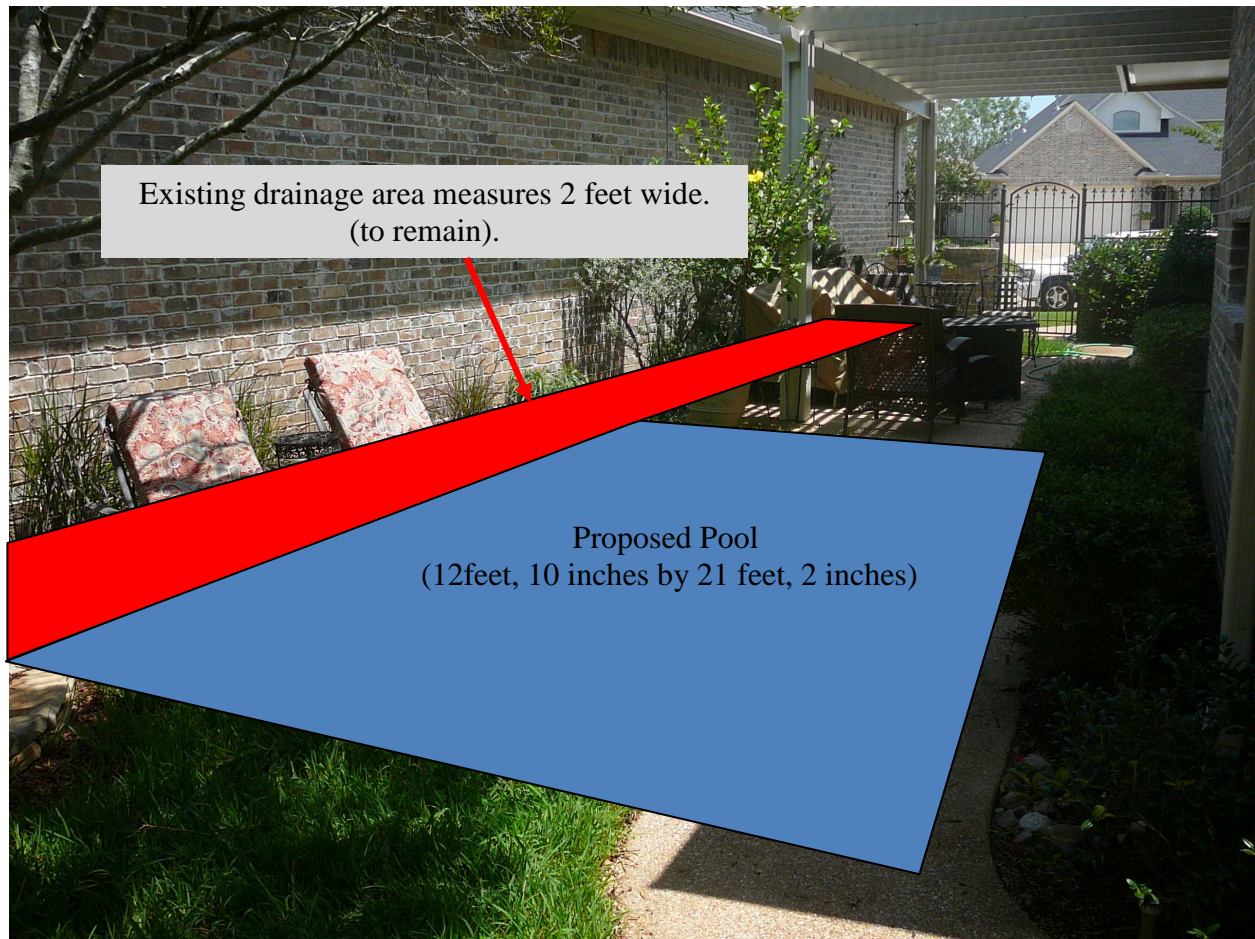


SITE PICTURES (TAKEN 06-27-16)

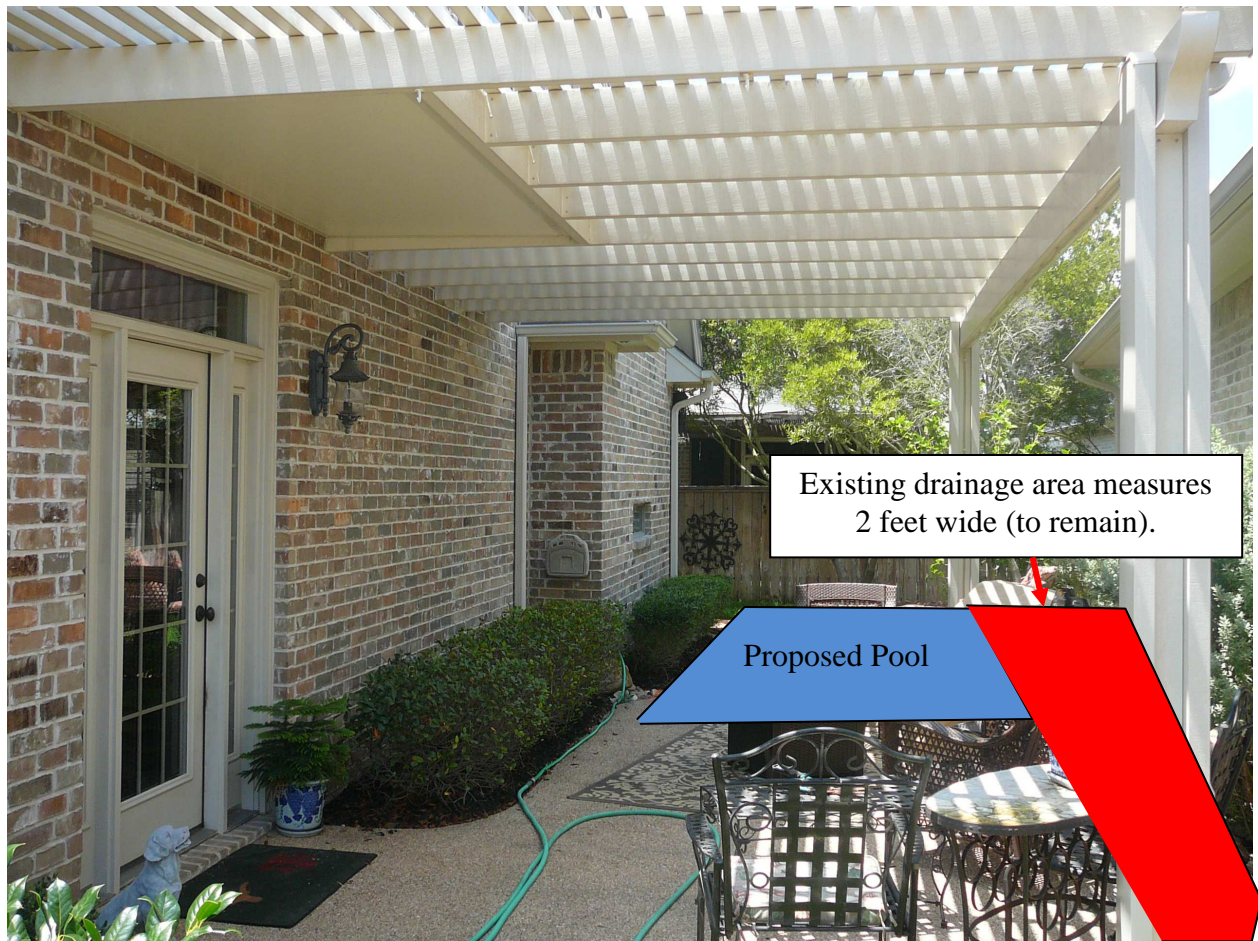
VIEW FROM THE REAR OF THE PROPERTY (SOUTHWESTERN PROPERTY LINE)



VIEW FROM THE REAR OF THE PROPERTY (SOUTHWESTERN PROPERTY LINE)



VIEW FROM THE FRONT OF THE SUBJECT PROPERTY (NORTHEASTERN PROPERTY LINE)



APPLICANT REQUEST:

Setback Variance Request

The following page should be completed ONLY for setback variance requests.

Please describe the type of variance being requested:

Request to build inground pool in the
Building setback

State how the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties in the area:

The pool will not be injurious to anyone in this area, and will not be visible either. Drainage will be addressed so it doesn't affect properties in the area.

State how the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties directly abutting the subject property:

The pool will not be injurious to anyone in this area, and will not be visible to abutting properties. Drainage will be addressed so it does not affect abutting properties.

State how the hardships and difficulties imposed upon the owner are greater than the benefits to be derived by the general public through compliance with the requirements of the ordinance:

The customer is limited in yard space, and denial would prevent them from an addition that is meant to benefit the family, and will not have any negative impact on any properties in this area.

ANALYSIS:

The Planning and Zoning Commission may authorize a variance from minimum building setback standards stipulated in the Land and Site Development Ordinance. No variance shall be granted unless the Planning and Zoning Commission finds that all of the following criteria are met:

1. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the area (an area encompassing approximately a 200-foot radius);

The granting of the variance to allow for an in-ground pool to be placed within 2-feet of the shared northwestern property line and also the abutting residential structure would not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the area (an area encompassing approximately a 200-foot radius) because properties within in 200 feet of the subject property are not directly affected by the requested variance. If granted, the proposed pool structure would not be directly visible from neighboring properties and only partially visible from the street through the wrought iron gate which currently exists along the front fence line.

2. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties abutting the subject property;

In 2004, variances to allow an 8-foot reduction to the 15-foot side building setback and a 5-foot reduction to the 15-foot rear setback was granted to allow an in-ground pool to be installed that was 7 feet from the neighboring shared zero lot line for the property located next to the subject property, 5004 Fairfield Court (case no. PV04-31 & PV04-35). In those cases even with the 8-foot reduction, the pool would be 7 feet away from the neighboring residential structure located on the shared zero lot line. That is only a 6-inch reduction of the standard 7.5-foot setback typically required for a non-zero lot line property. Additionally, in the 2004 case, due to the configuration of the lot (a polygon vs rectangle) and the reduction of the 15-foot rear setback there was more room at the rear of the property to place the pool structure than what is available for this subject property (970 square feet vs 625 square feet).

Staff contends that granting the requested variance in this particular case, however, could be materially injurious to the property abutting the subject property. In general, building setbacks are established to ensure that the use of a property does not infringe on the rights of neighbors, to protect neighboring properties from the actions of their neighbors, to allow a safe distance between structures and to allow access to air and light between buildings. The requested variance, if approved would be materially injurious to the property abutting the subject property because it will allow the in-ground pool to be placed within 2 feet from the residential structure located on the adjacent property along the northwest zero lot line. Staff contends that installing an in-ground pool within 2 feet of the residential structure could affect the structural integrity of the foundation of the neighboring residential structure.

Section R403.1.7 of the International Residential Building Code (IRC) requires a 1 to 1 pool depth to separation from the foundation of neighboring residential structures. For each foot of depth a pool is, the pool is required to be one foot away from any residential foundation located on a neighboring property. In this case the pool is proposed to be 4 feet deep and therefore should be located a minimum of 4 feet away from the adjacent property foundation.

If the variance were approved, the City of Bryan will have to require that a structural engineer approve the design of the pool to insure that the neighbor's house will be protected from any pool water seepage or other issues related to the expansive soil types that are typically found in

the City of Bryan. Swimming pools constructed near home foundations in expansive clay soils are frequently sources of damaging moisture. Since pools are generally in arid climates, this creates a moisture differential which can be severe enough to lift adjacent pool decks and house foundations.

Additionally, if approved, the proposed variance request would result in there being a 2-foot wide strip of land remaining between the adjacent residential structure and the pool's water feature (see site plan above) on the subject property. Staff believes that the installation of an in-ground pool in the proposed location creates an unsafe condition by restricting safe access for emergency personal to use in order to access the adjacent residential structure in the event of a fire or other emergency.

The City's Fire Marshall has repeatedly voiced concerns regarding the reduction of minimum side building setbacks. In this case the narrow distance from the pool to the adjacent residential structure, approximately 2 feet, would not allow for the safe passage of emergency personal. Also, there is an unpermitted pergola located within the 15-foot setback (see site photos above). This structure was not permitted (and did not receive any setback variance approvals from the City) It is important to note that the unpermitted pergola appears to have been constructed sometime between 2010 and 2012.

While the City of Bryan cannot legally enforce deed restrictions adopted by a homeowner's association, the deed restrictions established for this subdivision state that "Each patio home constructed in Block 3 of Park Meadow shall have a 5-foot construction and maintenance easement on the non-zero side of each lot for the use of adjacent owner. Any improvements in this area which would hinder the construction or maintenance of the neighboring dwelling or which would restrict surface drainage are prohibited." Staff contends that given the reasons above, the requested the variance to allow an in-ground swimming pool to be constructed 2 feet from a residential foundation on the adjacent property would be materially injurious to the property abutting the subject property and therefore should be denied.

3. That the hardships and difficulties imposed upon the owner/applicant are greater than the benefits to be derived by the general public through compliance with the requirements of this chapter.

The applicant states that due to the presence of the 10-foot P.U.E. along the rear (southwestern) property line, there is no other location available for them to install an in-ground pool. While staff does not disagree with this assessment, it is staff's opinion that given the reasons stated above with regards to the protection of neighboring property and the possible hazard a reduction to the 15-foot setback could have to emergency personal, that the hardships imposed on the property owner are not greater than the benefits derived by the general public through compliance with the requirements of the established 15-foot platted side setback.

RECOMMENDATION:

Based on all of these considerations, staff recommends **denial** the requested variance.